

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5144 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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R P BUCH

Versus

GUJARAT STATE TRANSPORT CORPN  
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Appearance:

NANAVATI & NANAVATI for Petitioners  
MR MD PANDYA for Respondent No. 1  
Mr K G Sheth, APP for Respondent No. 2  
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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 13/10/2000

ORAL JUDGEMENT

The petitioners above named have preferred this petition under Articles 224 and 14 of the Constitution of India for appropriate writ, order or direction to the

respondents that as and when the petitioners or any of them make an application through them for the post of the Divisional Traffic Officer (for short, 'DTO'), their application shall not be scuttled on the ground that these posts are equivalent to the posts from the time scale point of view. They have further prayed for suitable writ, order or direction to be issued to the respondents directing them to consider the petitioners' representation for amending the rules of Recruitment of the Divisional Controller by inducting names of Senior Labour Officers as the fourth category eligible to be prompted as Divisional Controller. They have further prayed for appropriate writ order or direction declaring that general standing order No.666 of 1979 at Annexure 'A' are illegal, arbitrary and violative of article 14 of the Constitution of India and to direct the respondents to include Sr.Labour Officers in the channel of promotion for the post of Divisional Controller in pay scale of Rs.875-2085 forthwith.

2. On receipt of the aforesaid petition, notice was issued at the first instance and thereafter, rule was issued on 19.6.1990. Learned Advocate Mr M D Pandya has put in appearance on behalf of the respondent. The petitioners' case is that they were all working as Sr.Labour Officers in the employment of the respondent. It is also their case that the first respondent is a State within the meaning of Article 12 of the Constitution of India. Second respondent is the State of Gujarat which is required to be joined in the matter since the rules and regulation relating to service conditions of the first respondent are required to be approved by the second respondent and these rules and regulations can be put to implementation only after they are approved by the second respondent. The petitioners' case is that they were senior Labour Officers in the respondent-corporation and they have rendered very long service in this capacity. It is their case that though they are very senior, considering the length of services, they are not made eligible for the promotion to the post of Divisional Controller. It is their case that the persons coming from other branches are made eligible for promotion to the post of Divisional Controllers. That even the Labour Officers who are junior in rank are also eligible for consideration to the post of Divisional Controller in the employment of first respondent. That despite the said position, the Sr. Labour Officers who are senior in rank are not made eligible for the said promotion. It is contended that to the aforesaid extent, the policy of promotion of the first respondent is not rationale and, therefore, it is prayed that appropriate

writ, order or direction be issued to the respondents to consider their case and to amend the rules of recruitment for the post of Divisional Controller so that that the Senior Labour Officers may be made eligible for the said promotion. The respondents have resisted the petition by filing affidavit of Vijay S Hajare, Legal Advisor to the first respondent at page 38. Documents have been produced by both the sides.

3. I have heard the learned Advocates for the parties and have perused the papers. It is very clear that the Labour Officers are entitled to be considered for the post of promotion to the cadre of Divisional Controller. There is no dispute about the same. In fact, the Labour Officers can be promoted to the post of Divisional Traffic Officers and thereafter, they would be eligible for promotion to the post of Divisional Controller. This is the position of rule and there is no dispute about the same. On the other hand, Sr.Labour Officers are not eligible for further promotion to the post of Divisional Controller or any other position.

4. This would mean that a Labour Officer who is promoted to the post of Divisional Traffic Officer can be further promoted as Divisional Controller but if a junior Labour Officer is promoted to the post of Sr.Labour Officer, then such Sr.Labour Officer has no avenue of promotion and he will never be eligible for further promotion to the cadre of Divisional Controller. It has, therefore, been argued at length that in view of the aforesaid position, the rules and regulations for the recruitment to the post of Divisional Controller are illegal, irrational and unreasonable.

5. Learned Advocate for the respondent has also read out the affidavit filed on behalf of the respondent by the Legal Advisor to the first respondent at page 13. The aforesaid affidavit makes it clear that the first respondent had received representations from the Unions and they have also agreed with the said proposal of the Union. It is also a matter of fact that the Corporation has sought approval of the State Government for the amendment to be brought about in the matter of qualifications for recruitment and promotion and interse ratio between the two brought about by G.S.O. 1031/95. The affidavit further says that in the meanwhile, by Resolution No.7919 dated 7.9.1996, the Corporation had resolved to restructure its set up and to amend the qualifications for recruitment and promotion to the various Class I & II posts and the interse ratio between the direct recruitment and promotion. Learned Advocate

for the parties have agreed that if the rules are amended in accordance with the aforesaid statement of facts made in para 6 of the affidavit at pages no.14 and 15, then the grievance of the petitioner will be resolved and the requirement of the petitioners would stand satisfied, if the amendments are brought into force. It is an admitted position that the rules and regulations with respect to the service conditions of the employees on the establishment of the first respondent can be amended by first respondent only after the second respondent accords sanction to the proposed amendment in the rules and regulations. The affidavit makes it further clear that a proposal has been sent to the Government and the approval is awaited. This means that so far as the first respondent is concerned, it has already agreed with the proposal of the petitioners and now it is for the second respondent to respond to the said proposal. It appears that the said proposal is under consideration of the second respondent. Record shows that sufficient time has gone and, therefore, it would be necessary to direct respondent no.2 to expedite the decision in the matter. It has to be seen that the matter is pending before the Government since 3 to 4 years, then the difficulty would be that many persons would retire without getting the benefit of the amendment in rules and regulations. Promotion may not be a matter of right but to be considered for the post of promotion is a right in services rendered to the Government and all the Government oriented Boards and corporations. The factum of promotion is one of the basic considerations in the employees and officers of the Boards and Corporation. Moreover, there would be financial benefit available to such persons on such promotions. That would ultimately render benefit to such employees and officers at the time when they retire on superannuation. If they retire in a higher position, they would be entitled to more pension and other benefits. In that view of the matter, it would be necessary for respondent no.2 to expedite the decision in the matter. I am, therefore, of the view that when the first respondent has agreed with the proposal of the petitioners, it would be in the fitness of things to direct respondent no.2 to expedite decision on the proposal of the first respondent with respect to the amendment in the recruitment rules and other service conditions particularly for changing the eligibility criteria for the promotion to the post of Divisional Controller. I am of the view that when the matter is pending since about 3 to 4 years, it would be just and proper to direct the second respondent to clear the said proposal within a span of 4 years. If it is done, then the petitioners will have no grievance and their

requirement would be satisfied. On the other hand, the first respondent has agreed with the said proposal and therefore, there is no question of any difficulty to be experienced by the first respondent. So far as the second respondent is concerned, it has to simply accord sanction or otherwise to the proposal received by it.

6. In the aforesaid view of the matter, justice would be done if a direction is given to the second respondent to expedite decision in the matter. This can be done by allowing this petition and by issuing appropriate direction to the respondents. In that view of the matter, this petition is allowed. The second respondent is directed to decide the proposal of the first respondent received by it with respect to the amendment in the recruitment rules for promotion to the post of Divisional Controller and of other posts on the establishment of the first respondent. as early as possible and preferably within four months from today.

Rule is made absolute to the extent indicated above. No order as to costs. Direct Service is permitted.

13.10.2000 [D P Buch, J.]  
msp.